PUBLIC PROSECUTOR

v.

SUA'AD BIN AZIZ

HIGH COURT, PENANG
TUAN HAJI YAACOB BIN HAJI ISMAIL JC
[CRIMINAL TRIAL NO. 47-18-91]
2 NOVEMBER 1993

DANGEROUS DRUGS: Charge of trafficking in Cannabis - Accused gave information on whereabouts of cannabis and led police to its recovery - Information given after interrogation at place of arrest - Admissibility - Whether information a confession - Whether information led to discovery of fact - Evidence Act 1950, ss. 26, 27 - Criminal Procedure Code, s. 113 - Dangerous Drugs Act 1952 (Revised 1980), ss. 37, 37(da)(vi), 39B(1)(a).

The accused was charged with trafficking 3013.2 grams of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act, 1952 (Revised 1980). The evidence as led by the prosecution showed that the accused had been interrogated at the place of his arrest by ASP Shahriman (SP2) and as a result of that interrogation the accused gave information to SP2 that " Saya ada simpan ganja dalam tiga tempat dan saya boleh tunjuk". SP2 later wrote this information on a page from a calendar. The evidence further showed that after giving this information the accused led SP2 and the police party to three different spots and at each spot the accused informed SP2 " Di dalam tanah itu ada ganja". Three plastic bags containing cannabis were recovered from the three places pointed by the accused to the police party.

Defence Counsel objected to the admission of the evidence of the above statements on the ground that they were not information but confession and were therefore inadmissible under s. 26 of the Evidence Act 1950. The prosecution contended that what the accused said were information which led to the discovery of facts falling under s. 27 of the Act and and therefore admissible.

Held:

[1] The information given by the accused was admissible in evidence as they led to the discovery of facts. It is clear that the information given led to the discovery of the cannabis and that SP2 would not be able to locate the three spots from which the said cannabis was recovered without the information given by the accused and without the accused showing him the three spots.

[2] From the evidence before the Court it is clear that the accused was in possession of the drugs and since the amount of the drugs is more than 200 grams the presumption under s. 37(da)(vi) applies. On the evidence the defence has failed to rebut this presumption and has further failed to raise a reasonable doubt in the prosecution case.

[Accused found guilty, convicted and sentenced to death].

Cases referred to:

Wai Chan Leong v. PP [1989] 2 CLJ 1168 ***(foll)***
PP v. Sandra Margaret Birch [1977] 1 MLJ 129 ***(foll)***
Muthusamy v. PP [1948] 14 MLJ 57 ***(foll)***
Dato Mokhtar Hashim v. PP [1983] 2 MLJ 232 ***(foll)***
Munusamy v. PP [1987] 1 MLJ 492 ***(foll)***
Haw Tua Tau v. PP [1981] 2 MLJ 49 ***(foll)***

Legislation referred to:

Criminal Procedure Code, s. 113
Dangerous Drugs Act 1952, ss. 2, 37A(1), (da)(vi), 39B(1)(a), (2)
Evidence Act 1950, ss. 26, 27(1), 155(c)

For the public prosecutor - Che Mohd Ruzima bin Ghazali, DPP
For the accused - Harpal Singh; M/s. Harpal Singh & Co.

JUDGMENT

Haji Yaacob bin Haji Ismail JC:

The accused was charged with the offence of:

> Bahawa kamu pada 14 Februari 1991, jam lebih kurang 7.50 pagi, di Sekitar Kawasan Sebuah Pondok yang terletak di tepi rumah No. 816, Bagan Ajam, di dalam daerah Butterworth, di dalam Negeri Pulau Pinang, telah mengedar dadah merbahaya, iaitu 3,013.2 gram ganja yang mana kamu telah melakukan satu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 (Semakan 1980) dan boleh dihukum di bawah s. 39B(2) Akta yang sama.

The evidence as led by the prosecution was that A.S.P. Shahriman (SP2) acting on information, on 14 February 1991 at 7.40 a.m. led a police party comprising Const. Halim (SP3). L/Cpl. Zainon, L/Cpl. Abu Bakar, Const. Fauzi, Const. Rafik and Const. Nazri to a hut located behind house No. 816 Bagan Ajam. On reaching the hut he knocked at the door and identified himself as a police officer. When there was no reply he

kicked open the door of the hut. When the door opened he saw three male Malays including the accused lying inside the hut. Const. Hashim was instructed to guard the accused.

SP2 then conducted a search of the hut. He found a plastic bag lying near a place where pots were kept. On opening the bag he found inside some newspapers 17 packets of dried leaves suspected to be cannabis. All the three occupants of the hut were then arrested and handcuffed.

The accused was taken to another room in the hut. SP2 then interrogated him. During the interrogation accused told SP2 he had buried cannabis in 3 places outside the hut. SP2 wrote the information on a page of a calendar for the months of November and December 1991 (P7). Accused then took SP2 to a spot behind the hut and pointed to a stone and told SP2 he had buried cannabis under the stone. The accused then moved the stone and took one plastic bag and gave it to SP2. On opening the bag SP2 found 48 plastic packets containing dried leaves.

The accused then took SP2 to a place outside the fence near the hut. There accused told SP2 he had buried cannabis. Accused was given a small garden spade which was found near the fence. Using the spade the accused dug at the spot to a depth of 6 inches and took out one plastic bag and gave it to SP2. On opening the bag SP2 found it contained dried leaves which had been compacted (P4E).

The accused then brought SP2 back to the area near the hut. He showed SP2 a spot behind a bird cage and told SP2 he had buried cannabis there. Using the same spade the accused dug the earth and took out one plastic bag and gave it to SP2. Inside the bag there were dried leaves which had been compacted (P5D).

The accused was taken to the Police Headquarters in Butterworth. He was served with a search list.

When SP2 was giving evidence the learned Counsel objected to that part of the evidence where the accused said to SP2 these words - "Sua'ad bin Aziz beritahu saya dia menanam ganja di 3 tempat". The objection was based on the ground that the statement was made after the accused was arrested and that it was a confession and not an information. Counsel relied on s. 26 of Evidence Act, s. 113 of the Criminal Procedure Code and s. 37 of Dangerous Drugs Act. To this contention the learned Deputy replied that the statement was not a confession in the sense that the accused did not say he owned the cannabis. Prosecution had sought to tender this evidence since the information given by the accused would lead to a discovery of fact later on in the prosecution case and was admissible under s. 27 of the Evidence Act. He cited the case of *Wai Chan Leong v. PP* [1989] 2 CLJ 1168 for his contention.

The Court was of the view that when this objection was first brought up it was too early in the trial for the Court to make any ruling on the admissibility of what the accused said to SP2 because at that stage the fact was not discovered yet. So it was not possible for the Court to rule whether the information given should or should not be allowed in evidence.

Learned Counsel also objected to the statement by the accused which SP2 wrote on a page from a calendar (P7). I ruled that at that stage it was premature for the Court to give any ruling as no evidence had been adduced on the fact discovered.

Learned Counsel also objected to a second information given by the accused to SP2 in the words "Di situ dia beritahu saya dia ada menanam ganja ditempat itu" again on the ground that the information amounted to a confession by the accused. The learned Deputy replied that the second information was a continuation of the earlier information.

For the third time the accused pointed to a spot near a bird cage and according to SP2 and informed him "dia ada tanam ganja di situ". These words were objected to again by learned Counsel. But the Court ruled that further evidence had to be adduced to find if the information led to the discovery of a fact. If a fact is later discovered as a result of the information given by the accused then such information would in my opinion be admissible under s. 27 of the Evidence Act.

Now what were the facts discovered as a result of the three pieces of information given by the accused. According to SP2 the first information given by the accused was in the following words: "Sua'ad bin Aziz beritahu saya dia menanam ganja di tiga tempat". This piece of information standing on its own was not of much value but when connected with subsequent information

given by the accused the relevancy of it could be seen.

The next information given by the accused to SP2 was when he (accused) pointed to a stone and said to SP2 he had buried cannabis under the stone. On SP2's instruction the accused removed the stone. On shifting the stone accused took out a plastic bag which contained 48 packets of dried leaves suspected to be cannabis (P3C).

The second information given by the accused to SP2 was when he (the accused) took SP2 and SP3 to a place outside the fence near the hut. The accused told SP2 he had buried cannabis at the spot. SP2 then gave the accused a garden spade and asked him to dig. On digging to a depth of six inches the accused took out one plastic bag and handed it to SP2. Inside the bag there was Malay newspaper and inside the newspaper was another plastic containing dried leaves which had been compacted. These leaves were suspected to be cannabis (P4E).

The third information was given by the accused to SP2 at an area near the hut. This time the accused pointed to a spot beside a bird cage and said he had buried cannabis there. Again SP2 handed to the accused the same garden spade and ask him to dig the earth. After digging to a depth of six inches the accused took out a plastic bag and handed it to SP2. On examination it was found that inside the plastic bag there was "Berita Harian" newspaper. Inside the newspaper was found dried leaves which had been compacted and suspected to be cannabis (P5D).

SP2 further stated that he would not be able to locate the three spots from which cannabis was recovered without the information given by the accused and without the accused showing him the three spots.

It was evidently clear that the incriminating exhibits, that is, P3C, P4E and P5D were discovered as a result of information given by the accused. There was no doubt that without the information the cannabis would not have been found.

Section 27(1) of the Evidence Act 1950 states that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates directly to the fact thereby discovered may be proved.

In answer to the objection by learned Counsel on the admissibility of the information given by the accused, learned Deputy argued in all three cases it was as a result of the information given by the accused that facts were discovered. In this case the information given led to the discovery of the incriminating cannabis at three places. In fact it was the accused who took the police party to all three places and from there recovered plastic bags containing the cannabis. According to the learned Deputy because of these discoveries the three pieces of information given by the accused would be admissible.

I held that the information given was admissible since they led to the discovery of facts. Section 27 of the Evidence Act allows that such information may be proved (See *Wai Chan Leong v. PP* [1989] 2 CLJ 1168 SC and *PP v. Sandra Margaret Birch* [1977] 1 MLJ 129).

Mr. Chong Sip Seng (SP1) government chemist gave evidence that on 20 February 1991 at 3.20 p.m. he received two envelopes and two packages form Insp. Ismail Din (SP9). The four items were marked F, G, H and N and sealed with the seal 'Polis Diraja Malaysia 40'. SP1 then examined and analyzed the exhibits. In envelope F he found 48 small plastic packets. In each packet he found dried plants. The net weight of dried plants in the 48 packets amounted to 61.3 gms. (P3C). From package G, SP1 found a compressed block of dried plants weighing 1,284.2 gms. (P4E). From package H one block of compressed dried plants weighing 1,667.7 gms. (P5D) was found. After analyzing samples from envelope F and packages G and H SP1 confirmed that the dried plants obtained from the envelopes and two packages were cannabis as defined in the Dangerous Drugs Act 1952.

After examination SP1 packed the exhibits and sealed them with the seal Jabatan Kimia 5 and kept them in his cabinet which was situated inside the office strong room. The exhibits were handed to Insp. Ismail (SP9) on 12 April 1991 at 3.00 p.m.

DPC. Halim (SP3) stated that on 14 February 1991 at 7.40 a.m. he was in a police party led by SP2 which raided a hut located beside house No. 816 Bagan Ajam, Butterworth. On arrival at the hut he saw SP2 knock at the door of the hut and identified himself as a police officer. SP2 then

kicked the door and entered the hut. SP3 saw three male Malay lying on the floor of the hut.

SP3 further stated SP2 conducted a search of the hut. He found 17 plastic packets containing dried leaves on a rack. SP2 then instructed him to handcuff the male Malay named Sua'ad (the accused). SP2 then interrogated the accused. During the interrogation the accused gave this information to SP2 "Saya ada simpan ganja dalam tiga tempat dan saya boleh tunjuk". This information was written down by SP2 on a page from a calendar (Exh. P7).

According to SP3 the accused then told SP2 "Bawah batu ada plastic berisi ganja." The accused then brought SP2 and SP3 behind the hut and pointed to a spot near a piece of stone. On instruction of SP2 the accused moved the stone and recovered one plastic packet containing dried leaves (P3C).

After that the accused brought SP2 and SP3 to an area outside the hut and pointed to a spot and said "Dalam tanah itu ada ganja". Using a garden spade the accused dug the earth and recovered one plastic package containing dried leaves which had been compressed into a block (P4E).

The accused then brought SP2 and SP3 to a place near a bird cage and pointed to a spot saying "Dalam tanah itu ada ganja". Again on instruction of SP2 the accused dug the earth and recovered one plastic package containing dried leaves which had been compressed into a block (P5C).

Learned Counsel again objected to the admissibility of the information given by the accused, that is, "Saya ada simpan ganja dalam 3 tempat dan saya boleh tunjuk" dan "bawah batu ada plastik berisi ganja" on the ground that the information was given after the accused was arrested. According to Counsel this evidence fell under s. 26 of Evidence Act and therefore should not be proved. To this contention the learned Deputy replied that the prosecution was relying on s. 27 of Evidence Act which allowed for such evidence to be proved.

The Court considered the objection and as explained earlier in this judgment the Court was of the view that s. 27 of the Act allows for such evidence to be proved since by virtue of the information given certain facts were later discovered. That being the case the Court ruled that the information given by the accused in the three instances were admissible.

D.P.C. Mohd. Rofit (SP4) stated that on 14 February 1991 he was with a police party led by SP2 which raided a hut beside house No. 816 Bagan Ajam, Butterworth. On arrival at the hut he saw SP2 knock the door a few times. When there was no answer SP2 kicked the door open. He saw inside the hut there were three male Malay lying on the floor.

SP4 stated he saw SP2 recover one plastic bag containing 17 plastic packets of dried leaves suspected to be cannabis from a rack where cooking pots were kept. He then saw SP2 instruct SP3 to bring the accused to another room. He remained in the room to guard the other two persons who were arrested.

During the trial when SP2 was recalled by the learned Deputy to tender his police report (P10) learned Counsel applied to the Court to impeach the credit of SP2 under s. 155(c) of the Evidence Act. Counsel referred to P10 at first page third line from bottom and second page line 6 in which SP2 stated "Di dalam tanah itu ada ganja". According to Counsel this was different from what was stated by SP2 during examination-in-chief, which was "Suad bin Aziz beritahu saya dia menanam ganja di tiga tempat."

At that stage the Court ruled there was contradiction in police report lodged by SP2 (P10) and his evidence during examination-in-chief. The application was therefore allowed. (*Muthusamy v. PP* [1948] MLJ 57).

SP2 explained to the Court that when he gave evidence in examination-in-chief he was not asked what were the exact words spoken by the accused. He mentioned what accused said in an indirect speech because of that. However during reexamination SP2 said he explained that he had made a mistake when he gave evidence during the examination-in-chief by saying what he stated in evidence and what he stated in his police report (P10) was the same. He reiterated what the accused said was the same as stated in P10.

On the second difference found in P10 at p. 2 line 6, SP2 explained it was his mistake not to state the actual words used by the accused. He said the reason was not to implicate the accused with the charge.

In his submission learned Counsel said the explanation by SP2 was not reasonable. On the first difference SP2 said he used indirect speech instead of direct speech. His second explanation was that he was not asked by the learned Deputy to state the actual words. Counsel said SP2 referred to the first information given by the accused but on each occasion SP2 repeated the same information. Since SP2 had admitted his mistake, his testimony during examination-in-chief should stand.

At this stage the Court did not make any ruling on the impeachment proceeding. Following *Dato Mokhtar Hashim v. PP* [1983] 2 MLJ 232 the ruling was postponed until the close of the prosecution case.

Learned Counsel made another application to impeach the credit of SP2 under s. 155 Evidence Act. He submitted that what was contained in P7, that is, the information given by the accused, was different from the replies given by the witness during cross-examination. There was a difference in times. SP2 stated he completed interrogating the accused after 9.00 a.m.

Learned Deputy submitted that there was no material contradiction regarding the times. The information was obtained between 9.45 - 10.00 a.m.

After examining P7 and comparing the time stated in it with the time stated by SP2 during cross-examination, the Court came to the conclusion that there was no material contradiction. The second application was therefore refused.

TPP Abdul Rahman (SP5) stated that on 14 February 1991 he recorded a cautioned statement from the accused at the request of Insp. Ismail Din (SP9), the Investigating Officer. In all SP5 recorded two statements from the accused, the second one on 18 February 1991. When these statements were tendered as evidence by the prosecution, learned Counsel objected on the ground that both statements were made involuntarily and not according to the provision of the law.

Resulting from the objection a trial-within-a-trial was held to determine its voluntariness. During the trial apart from SP5 who was the recording officer Insp. Ismail (SP9) also gave evidence.

The accused chose not to give any evidence during the trial-within-a-trial nor call any witness on his behalf.

At the end of the trial-within-a-trial after hearing the submission of both learned Counsel and learned Deputy I ruled that the cautioned statements recorded from the accused were admissible. Section 37A(1) Dangerous Drugs Act was fully complied with by the recording officer (EW1). I find that there was no evidence to show that while the statement of the accused was taken any threat, promise or inducement was made to the accused. From the evidence of EW1 it was clear that despite severe questioning by EW1 as to his voluntariness, the accused had agreed to give his statement. As such the Court found that there was no evidence to indicate that the accused was threatened, persuaded or had been induced to give the statements.

Constable Zakaria (SP7) gave evidence that on 19 April 1991 he was working in the exhibit store of District Police Headquarters at Butterworth. On that day at 9.00 a.m. he received 2 envelopes and 2 packages from Insp. Ismail (SP9) in connection with Police Report No. 880/91. These exhibits were P3, P4, P5 and P6. Later he handed the exhibits to Cpl. Aminuddin to be kept in the exhibit store.

Cpl. Aminuddin (SP8) stated that he was the person in charge of the exhibit store at District Police Headquarters, Butterworth. On 19 April 1991 he received from SP7 2 envelopes and 2 packages (P3, P4, P5 and P6) to be kept in the store. These exhibits were kept there until 19 July 1993 when he handed them to Insp. Ismail (SP9) to be brought to the High Court for the present trial.

I was satisfied that the exhibits in this case namely the seized cannabis (exh. P3, P4, P5 and P6) were handled and safeguarded properly from the time of seizure on 14 February 1991 until they were produced in Court on 19 July 1993. The evidence showed that the above exhibits had been handled from SP2 to SP9 to SP1. After examining the exhibits SP1 handed them back to SP9 who later handed them to SP7. SP7 then handed them to SP8 who later handed them back to SP9 for the Court case.

SP9 the Investigating Officer in this case stated that on 14 February 1991 he received from SP2, 3 persons who were arrested earlier and several

exhibits. Among them were exh. P3, P4, P5 and P6. SP9 then packed the exhibits, sealed them with the seal Polis DiRaja Malaysia 40 and on 20 February 1991 brought them to the Chemistry Department and handed them to the chemist (SP1).

On 12 April 1991 SP9 received back the exhibits from SP1 and kept them in the police exhibit store until 19 July 1993.

SP9 also requested TPP Rahman (SP5) to record cautioned statements from the accused on 14 February 1991 and 18 February 1991.

When cross-examined by learned Counsel SP9 stated he did not take any hand swab or finger clipping from the accused.

At the close of the prosecution case I ruled that there was a *prima facie* case against the accused which if unrebutted would warrant his conviction.

I was satisfied that the incriminating exhibits recovered by the police search party (exh. P3, P4, P5 and P6) were cannabis as defined in the Dangerous Drugs Act. The evidence of the chemist (SP1) was not disputed by the defence and there was no reason for the Court to reject his evidence (*Munusamy lwn. PP* [1987] 1 MLJ 492, SC).

I was also satisfied that PPP Abu Shahriman (SP2) was a credible witness. He was the police officer in charge of the raiding party which discovered the cannabis. An attempt was made by the defence to impeach his credit. I allowed an impeachment proceeding against him to take place but at the end of it I was satisfied that SP2 had explained satisfactorily the contradictions found in his examination-in-chief and his police report (exh. P10). I ruled that SP2 was a witness worthy of credit (*Dato Mokhtar Hashim v. PP* [1983] 2 MLJ 232 FC; *Muthusamy v. PP* [1948] 14 MLJ 57).

I also ruled that the information given by the accused to SP2 as recorded on a calendar (exh. P7) was admissible. As explained earlier this information led to the discovery of cannabis in three separate places. That being so exh. P7 would be admissible under s. 27 of Evidence Act (*Wai Chan Leong v. PP* [1989] 2 CLJ 1168 SC).

During the prosecution case, the prosecution relied on two cautioned statements (exh. P11A and P11B) which were recorded from the accused by SP5. I have dealt with this matter earlier in my judgment. My ruling at the end of a trial-within-a-trial was that both statements were made voluntarily and therefore could be admitted as evidence.

I was satisfied that the accused not only had knowledge of the incriminating exhibits but he also had custody and control. He knew where the exhibits were hidden and he brought SP2 to the three spots from which he himself recovered the exhibits.

The amount of cannabis found was 3,013 gms. This amount was clearly in excess of 200 gms. stipulated under s. 37(da)(vi) of the Dangerous Drugs Act. By virtue of this section a person is deemed to be a trafficker if he possesses 200 gms. or more of the drug. This presumption applies to the accused.

Based on the evidence adduced by the prosecution and following the principles stated in *Haw Tua Tau v. PP* [1981] 2 MLJ 49 PC I called on the accused to answer the charge in accordance with s. 180 Criminal Procedure Code (FMS Cap.6).

In his defence the accused stated that the area around the hut belonged to someone who stayed in Kuala Lumpur. He had no authority to stop people from coming to the area. He did not own the land on which the hut was built.

The accused also said the exhibits found were not his since the police found them in an area away from the hut. Referring to exhibit P7 which was the information the prosecution said the accused gave to SP2, the accused denied he gave such information. He was merely asked to sign on exh. P7.

According to the accused when the police asked him where the other cannabis were kept he showed them the places. But he said these drugs were buried there by one Nazri before he died. They did not belong to him.

Regarding the cautioned statements (exh. P11A & B) the accused explained he merely signed them because he was confused. He alleged that the police did not inform him that he had the right either to sign or refuse to sign on exh. P11A & P11B. He also was unable to read both statements. Neither the contents of P11A nor P11B were read back to him prior to his signing them. He also did not understand the caution that was given. Apart from this accused said that when

the first cautioned statement was recorded from him on 14 February 1991 he was not given any food or drink from the time he was arrested until the time the statement was recorded.

The accused also denied stating in his cautioned statement (exh. P11B) that the cannabis belonged to him and Nazri. He maintained it was Nazri who had buried the cannabis about two weeks before he (accused) was arrested. It was when the police asked for the place where Nazri kept the cannabis that he showed them the three spots.

When cross-examined by the learned Deputy the accused said the land on which the hut was built belonged to someone who lived in Kuala Lumpur. The hut was built for the use of his elder brother who was mentally unsound. On the night in question the accused stated when he returned to the hut after selling burger he found two of his friends were already there.

Regarding the exhibits, the accused stated he knew where they were kept because he saw Nazri keeping them there though he did not ask him about it. He denied burying the exhibits. He also denied giving any statement to the police both on the day of his arrest that is on 14 February 1991 and on 18 February 1991.

The accused further alleged that he was being victimized by the police. He denied that he had tried to connect Nazri to the exhibits because he knew that Nazri was dead. He said he did not mention to the police that Nazri buried the cannabis because the police did not take any statement from him.

Consideration of the defence case

Basically in answer to the prosecution, the accused had put up the following defences:

(i) The defence denied ever making the cautioned statements to the police on two occasions *viz* on 14 February 1991 and 18 February 1991.
(ii) The defence alleged that the cannabis found did not belong to him. It was owned by a deceased person named Nazri whom the accused saw burying them.

The defence submitted that the evidence of the chemist (SP1) should not be accepted by the Court because he did not give reasons for his finding. In Court SP1 gave evidence as to what he did to the exhibits which he received from the police. He weighed the exhibits. Then he analyzed them. As a result of his analysis he concluded that the exhibits were cannabis as defined in s. 2 of the Dangerous Drugs Act (Act).

SP1 was not crossed-examined on his evidence. The defence also did not produce any rebuttal evidence to contradict the evidence of SP1.

SP1 gave evidence that he received on 20 February 1991 from Insp. Ismail Din (SP9) 2 envelopes and 2 packets marked F, G, H and N. On what he did to these packets SP1 stated that he conducted an examination and analysis on the dried plant materials found in envelope F, packets G and H. As a result of his analysis he confirmed that the dried plant materials found in the envelope and two packets were cannabis as defined in the Act. As to the weight SP1 stated envelope F contained 61.3 gms. of cannabis, packet G contained 1,284.2 gms. of cannabis and packet H contained 1,667.7 gms. of cannabis. The total weight was 3,013.2 gms.

The Court found that there was no defects in the evidence of the chemist especially in regard to the analysis of the drugs. What was material was that at the end of his analysis the chemist finding was that the drugs he analyzed was cannabis as defined in the Act (See *Munusamy v. PP* [1987] 1 MLJ 492.)

In his defence the accused denied making the cautioned statement (exh. P11A & P11B) to TPP Abdul Rahman (SP5). An examination of exh. P11A and P11B would reveal that the items mentioned in it were in detailed form. It was not probable for the recording officer (SP5) to know the details unless he was told by the accused. His job was merely to record what was said by the person who gave the statement. It was alleged by the defence that SP5 cooked up the statement himself. But this could not be true because the details in the statement were outside the knowledge of SP5. Unless he was told something by the accused he could not on his own write the statement. If for one moment it was assumed that SP5 had included in the statement what was not said by the accused in order to fix the accused, the question that came to mind is what was the reason for SP5 to fix the accused? What benefit would SP5 get by fixing the accused or getting the accused into trouble? From the evidence it was clear that SP5 would gain nothing. In view of the evidence adduced during the trial-within-a-trial the Court was

satisfied that the accused did make a cautioned statement to SP5.

The accused in his defence also denied giving information to ASP Shahriman (SP2) in the words: "saya ada tanam ganja di tiga tempat. Saya boleh tunjuk." (I buried cannabis in 3 places and I can show). Instead he alleges that he told the police raiding party "Nazri simpan ganja" ("Nazri kept the ganja"). His explanation was that he only knew it was Nazri who kept the cannabis and not him. Looking at the prosecution evidence there was evidence by SP2 and SP3, members of the police raiding party, who testified that they heard the accused say that he had kept the drug in three places. The Court had no reason to reject the evidence of SP2 and SP3. What was more important was that not only the accused gave the information regarding the three spots where he had buried the drugs, he subsequently led the police party to recover those drugs from the three spots. Though the issue of the information was challenged vigourously by the defence, as explained earlier I ruled that the information was admissible by virtue of s. 27 of the Evidence Act 1952.

Under s. 37(da)(vi) of the Act a person in possession of more than 200 grams of cannabis is presumed to be a trafficker. In this case the weight of the cannabis recovered was 3,013 grams. From the evidence before the Court I was satisfied that the accused was in possession of the drugs and since the amount of the drugs was more than 200 grams this presumption applies. After hearing the case for the defence I came to the conclusion that the accused had failed to rebut the said presumption.

After considering the totality of the evidence before the Court I was satisfied that the defence had failed to raise a reasonable doubt in the prosecution case. In my view the prosecution had proved its case beyond reasonable doubt.

I found the accused guilty of the charge, convicted him and sentenced him to death.

SHAMUGAM S/O S. KANAPATHY

v.

PAPPAH D/O CHINNIAH NADAR

HIGH COURT, PENANG
TAN SRI DATUK EDGAR JOSEPH JR. SCJ
[CIVIL SUIT NO. 365 OF 1983]
5 JULY 1993

LAW OF SUCCESSION: Deceased died intestate - Rival claims to succession - Legitimacy - Whether plaintiff legitimate son of deceased - Burden of proof - Whether proof of paternity sufficient to establish legitimacy and parentage - Defendant's marriage to deceased solemnised during subsistence of earlier marriage to another person - Whether defendant lawful widow of deceased - Whether defendant's first marriage null & void for non-consumation.

PRACTICE AND PROCEDURE: Non-compliance with procedural requirement relating to form of commencement of proceedings - Whether proceedings nullified - Whether failure an irregularity - Objection - Objection raised after conclusion of hearing of case on merit - Whether objection too late - Whether failure to comply waived - Rules of the High Court O. 2 r. 1(1).

EVIDENCE: Exceptions to non-admissibility of hearsay evidence - Evidence Act 1950 s. 32(e) - Invocation of section - Prerequisite conditions - Impeachment - Statement in Joint Petition for dissolution of marriage contradicted testimony in Court - Whether credit impeached - Whether Estoppel and Res Judicata applied.

In this case both the plaintiff and the defendant claimed to be the sole and rightful beneficiary to the estate of one Kanapathy s/o Sinnathamby, deceased, who died intestate. The plaintiff commenced action by way of writ under the Distribution Act 1960 and claimed that he was the sole legitimate son of the deceased, having been born in India out of a lawful wedlock between the deceased and one Amirtham Ammal. In essence the plaintiff's claim to parentage was grounded on the following documents:

1. Certified copy of a statutory declaration sworn by the deceased during his lifetime in which the deceased swore that he was the father of the plaintiff.
2. An Emergency Certificate of Entry issued by the Madras Regional Passport Officer prior to the plaintiff's emigration to Malaysia which contained a statement by